

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1115 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

DEVJIBHAI VASHRASMBHAI

Versus

THE STATE OF GUJARAT

Appearance:

MR AD SHAH for Petitioner
MR BD DESAI , APP for Respondent.

CORAM : MR.JUSTICE K.R.VYAS and
MR.JUSTICE A.M.KAPADIA

Date of decision: 19/01/99

ORAL JUDGEMENT

Per:K.R.Vyas,J.

The appellant, who is the husband of deceased Induben, has filed this appeal challenging the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Bhavnagar in Sessions

Case No. 174/94 convicting the appellant for the offence punishable under section 498A and 306 IPC and sentencing him to undergo R.I. for one year and to pay a fine of Rs.200 in default to undergo further R.I. for two months for offence punishable under section 498A IPC and to undergo R.I. for eight years and to pay a fine of Rs.1000 in default to undergo R.I. for six months for offence punishable under section 306 IPC. Both the sentences were ordered to run concurrently.

The appellant along with other five accused were tried for the offences punishable under section 498A and 306 read with section 114 IPC. It is the case of the prosecution that the appellant married the deceased two years before the date of incident. It is the case of the prosecution that the appellant with the other accused, who are father, mother, brother and sisters of the appellant were ill-treating the deceased. The deceased complained about the cruelty and beating and because of that she was required to stay at her parental home for about two months. After persuasion, the deceased returned to her marital home. Even thereafter also incidents of cruelty and beating took place wherein rift of differences between the deceased and the accused became wider. The incident in question took place on 3rd May 1994 when the complainant Somiben Kalubhai, mother of the deceased, received information from the relatives of the accused that the deceased was admitted in the hospital with burn injuries. It is the case of the prosecution that the deceased Induben committed suicide due to harassment, cruelty and beating at the hands of the appellant and his family members. On the basis of the complaint, the police after completion of the investigation submitted chargesheet for the offences punishable under sections 498 and 306 read with section 114 of the IPC against the accused. All the accused pleaded not guilty to the charge and claimed to be tried. The learned Additional Sessions Judge, on appreciation of the evidence, came to the conclusion that the evidence of the prosecution witnesses about cruelty administered by original accused Nos. 1 and 3 to 6 was not available on record and, therefore, the learned Additional Sessions Judge acquitted the said accused for the offences with which they were charged. However, the learned Additional Sessions Judge on appreciation of evidence came to the conclusion that the dying declaration given by the deceased clearly established the cruelty and it was because of the allegation made by the appellant about the character of the deceased that the deceased committed suicide. The learned Additional Sessions Judge on the basis of the dying declaration convicted the appellant

for the offences punishable under Sections 498A and 306 IPC and ordered to suffer the sentence as stated hereinabove.

Mr.A.D.Shah, learned Advocate for the appellant has fairly stated that the appellant is not in a position to challenge the order of conviction in view of the dying declaration, Ex.40, of the deceased. In other words, Mr. Shah has conceded that the appellant has no case on merits. He, however, has pointed out certain circumstances with a view to take a lenient view as far as the sentence imposed upon the appellant is concerned. Since the conviction of the appellant is based on the dying declaration, Ex.40, and since we are also in agreement with the reasoning of the learned Additional Sessions Judge, we are of the view that the appellant cannot escape the conviction under section 498A and 306 IPC. Suffice it to say that the dying declaration, Ex.40, was given voluntarily in conscious position when that the deceased was in a position to make statements. Thus, the dying declaration, Ex.40, is trustworthy and, therefore, we accept the same and hold that the appellant is rightly convicted for the offences punishable under sections 498A and 306 IPC.

Mr. Shah learned Advocate for the appellant however invited our attention to the grounds stated by the appellant in his bail application being Miscellaneous Criminal Application No.5689 of 1998 and submitted that in view of the peculiar facts of the case, the appellant may be shown mercy. In the said application, it has been pointed out that the appellant is having old parents, two sisters of marriagable age and his own minor daughter aged six years. The appellant has remained in jail although out from the date of the commission of the offence till date and was not released on bail either during the trial or even thereafter. The appellant has in all served the sentence for four years and eight months by this time. Ordinarily once the charge is proved against a convict, this Court would not interfere with the order of sentence particularly when the convict is charged with the serious offences punishable under sections 498A and 306. However, considering the peculiar facts and circumstances of the case, we are of the opinion that the ends of justice would be met with if, while confirming the conviction and sentence under section 498A and conviction under section 306, the appellant is ordered to undergo six years R.I. and to pay a fine of Rs.1000/in default to undergo further R.I., instead of eight years R.I, for six months for the offence punishable under section 306 I.P.C.

In the result, this appeal is partly allowed.
The judgment and order of conviction passed by the learned Additional Sessions Judge, Bhavnagar, under Sections 498A and 306 of the IPC is confirmed. The order of sentence imposed against the appellant under section 498A is also confirmed. However, the order of sentence under Section 306 IPC is reduced by two years and the appellant is ordered to undergo R.I. for six years and to pay a fine of Rs.1000 in default to undergo further R.I. for six months. Both the sentences to run concurrently.

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